(1)

Supreme Court, U.S.
FILED
MAY 31 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1975

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

EARLENE POLYAK — Petitioner

vs

FRANK HULEN AND
WILMA LESNANSKY — Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES FROM THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

EARLENE POLYAK
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

50¢

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

I

Whether the United States Court of Appeals improperly dismissed cases affirming the decision of the United States District Court without considering if order to sell property without any compensation unconstitutionally deprives Petitioner of property without due process of law.

II

Whether the United States Court of Appeals improperly dismissed cases without hearing and has so far sanctioned the departure of accepted and usual course of judicial proceedings of the United States District Court as to call for this Court's power of Supervision.

III

Whether these cases within may be of imperative public importance to justify the deviation from normal appellete practice to revies cases in Court of Appeals and require immediate settlement in Court.

TABLE OF CONTENTS

	Page
Questions presented	1
Opinions	1
Jurisdiction	1
Constitutional Provisions	2
Statement of the Case	3
Statement of Facts	3
Reasons for Granting Writ I	16
Reasons for Granting Writ II	18
Reasons for Granting Writ III	22
Conclusion	23
Certificate of Service	24

INDEX TO APPENDICES

Appendix A	1
Appendix B	4
Appendix C	6
Appendix D	8
Appendix E	16

TABLE OF AUTHORITIES

Page

T.C.A. 29-27-117..... 17

Brown v. Felson, (1979) 442..... 11
US127 138

Binkeroff Faris & Savings Co v. 16
Hill, 281 US 673 678(1930)

Citizen's Life Ins. Co. v..... 15
Witherspoon, 127 Tenn. 363 (1912)

Com'r v. Simmen,(1948) 333 US 591..... 10

De Witt v. Dice, (1979) CAS Fla 599..... 8

Edwing v. Mytinger, Incc 339 US(1950)..... 8

Gilliam v, Butler, 663 S.W. 2d
801(Tenn. App.1983)..... 13

Grubbs v. General Electric(1978) 405US 8
699

Lindsey v. Norbert, 405 US 56(1972)..... 8

Keith v. Willers Truck Service,(1936)..... 11
64 S.D. 274 277 266

Kootz v. Cumis Ins. Society Inc. 676 S.W..... 12

Magruder's American Government, 1959..... 7
Amendment 14 739)

McCarthy v. William H. Hood Co.(1914)..... 11
219 Mass. 566 569 NE 439

Sealand Services Inc., v. Gaudet,..... 12

Tuny v. Ohio, 273 US 510(1927)..... 16

Wallach v. Lieberman, C.A.N.Y. 366..... 7
F2d 254

Watkins v. Grover, (1974) CA 9 Cal) 508..... 8
920

NO. 844

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1985

EARLENE POLYAK — Petitioner

vs

FRANK HULEN AND
WILMA LESNANSKY — Respondent

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE UNITED STATES
FROM THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Petitioner Earlene Polyak, prays that a writ of certiorari issue to review the order of the United States Court of Appeals for the Sixth Circuit in the above-entitled,and related cases in the United States District Court below.[1]

[1]Case Nos. 1:85-0016, Earlene Polyak v. Jim Hamilton and the Circuit Court of Lawrence County, 1:85-0120, Buford Evans v. Earlene Polyak, 1:85-0125, Earlene Polyak v. Thomas Stack, Henry, Henry & Stack, 3-85X-103, Earlene Polyak v. William Boston, Boston, Bates & Holt.

OPINIONS BELOW

The opinion of the United States Court of Appeals in Cases No. 85-5032/5101/5147 and 84-6090, are set forth in Appendix A. The opinion of the United States District Court in Case No. 1:84-0083, is set forth in Appendix B, and the opinion in Case No. 1:84-008 , is set forth in Appendix C. The opinion of the Court of Appeal and the Supreme Court of Tennessee, are set forth in Appendix D, and the opinion of the Chancery Court of Lawrence County, Tennessee is set forth in Appendix E.

JURISDICTION

The order of the United States Court of Appeals for the Sixth Circuit in Case Nos.85-5032/5102/5147. (District Case No. 1:84-0083), and 84-6090,(District Case No.1:84-0082), were entered on December 17, 1985. These cases were consolidated by order of the Court over Petitions objections. The Petition to Rehear En Banc was denied on February 13, 1986. Petitioner was granted an extension of time,on May 6, 1986, through June 13, 1986. This petition for writ of certorari timely filed during extension.

The jurisdiction of this Court is invoked pursuant to Articel III, Section 2, of the Constitution of the United States, which states the judicial power shall extend to all cases in law and equity between citizens of different States. It is invoked under 42 USC Sect. 1983, 42 USC Sec. 1982, Fifth, Seventh, and Fourteenth Amendments, Equal Access to Justice, and 42 USC 1981, and 60.02 Federal Rules of procedure.

CONSTITUTIONAL PROVISIONS

The pertinent portion of the Fifth Amendment provides as follows:

> No...person shall be deprived of life, liberty, or due process of law: nor shall private property be taken for public use, without just compensation.

U.S. Const.,V Cl 3and 4.

The pertinent portion of the Seventh Amendment provides as follows:

> ...where the value of controversy shall exceed twenty dollars, the right of jury trial shall be preserved....

U.S. Const. Amen. Seven.

The pertinent portion of the Fourteenth Amendment is as follows:

> Nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny any person within its jurisdiction the equal protection of the laws... or abridge the priveleges or immunities of citizens of U.S.

STATEMENT OF THE CASE

The order to sell Petitioner's retirement home unconstitutionally deprives her of her property interest without just compensation. This sale is the result of Frank Hulen's, who does not have any investment in this home, desire for it to be sold so his kids can buy it. Respondents do not have any money invested in this home, and are over sixty-two years of age and live in big homes nearby. They have not offered Petitioner any money for her investment, and the Trial Judge supports their greed by awarding her Court costs, and awards local attorneys fees. She was subjected to a hasty hearing in which her property was ordered sold, a New Trial was denied, and all appeals have been eluded by technicalities. Petitioner brings her need for just compensation to the Supreme Court.

STATEMENT OF FACTS

The facts are numerous and dispersed through out this writ, but one most important fact is that the total investment in this home, and Petitioner needs to live in a more temperate climate for her health, and the sale of this property is an irreparable damage, and the loss of a right to never be regained in her retirement home.

ANALYSIS OF DECISION

The United States Court of Appeals has so far sanctioned the departure of the United States District Court from the usual course of due process in judicial proceedings to deny Petitioner the right to defend,her right to her retirement home and just compensation, and in conflict with applicable decisions of the Supreme Court, to call for the exercise of this Court's power of suprevision.

This action arises out of the settlement by agreement initiated by Respondents in 1976, and as a result of this agreement Petitioner has restored and maintained the house on her agreed partition for a retirement home at her own expense for ten (10) years, and has possession as of this date.In 1982,Frank Hulen stated that he wanted the property sold so his kids could buy it, and he,and Wilma Lesnansky conspired to sell this property, including Petitioner's investment,without just compensation. And they retained William Boston, attorney for the family since 1976, and he divided his lolyalties and sued for sale at Public Auction.This home is located 32 miles south of "Saturn Plant" Tennessee.

Cases No. 84-5032/51/5147, and 84-6090, were consloidated for appeal by motion of local counsel for Respondents, William Boston's son, Edward Boston, over strenuoes objections by the pro se Petitioner. These cases were quickly dismissed by the District Court without oral argument or any kind of hearing. The Court of Appeals again dismisses cases without hearing oral argument and denied request for rehearing en banc.

The Court of Appeals dismissed Case No. 85-5032, affirming the District Court's dismissal of this complaint filed by the Petitioner to be awarded her rightful partition as in settlement by agreement in January, 1976. She described this division as to the agreed parts each person had abided by for seven (7) years. Petitioner stated that she did not want to sell her retirement home, and if they wanted to sell, she would buy their partition at a reasonable price, and that she would consider life estate in the complaint filed on October 18, 1984, under Diversity of Citizenship.

This Court rejects all of Petitioner's arguments except her subjection to ineffective counsel epresentation in Case No. 84-6090, and makes allowances for policy considerations for the State Courts, without regard for local prejudice and political influence.The Court denies her obligation to assume her case to protect her interest without any knowledge or expertise in law to demand a new trial, and her many efforts to achieve justice amid local prejudice and influence. This Court affirms and denys the District Court's denial of due process and jury trial in violation of the Seventh Amendment.

The Court makes error in identifying request for just compensation as injunctive relief. And disregards prejudice Petitioner believes against her pro se,sex, non-resident and the unapealable judgments which finally culminate in the amendment of Rule 5(a) Tennessee Rules of Appellate Procedure to deny the motion to forward the records in one case to the Court of Appeals in Tennessee, which denies appeal to her as non-residen

Petitioner submitted the unconstitutional question of deprivation of civil and constitutional

rights when she asked for a new trial in Case No. 84-6090, in the Chancery Court of Lawrence County, on December 19, 1986. She submitted a motion to the Spureme Cout of Tennessee, to revise unappealable judgment to Tennessee Rules of Appellate Procedure 60.02, fraud intrinsic and extrinsic. This unappeable judgement was prepared by William Boston and signed by the Honorable Jim Hamilton. Judge Hamilton instruced pro se to appeal judgment, on December 19, 1986.

Petitioner grounded her petition in Case No. 84-6090, in her belief that she was being denied in State court Proceedings her rights of due process and equal protection and in violation of civil and constitutional rights secured by the Fifth and Fourteenth Amendment, submitted to District Court on October 1, 1983.

> Even though district court found constitutional question frivilous, it is required practice to give the United States Attorney notice and leave it to him to interviene. Wallach v. Lieberman, C.A.N.Y. 366 F 2d 254.

Petitioner contends that the District Court improperly dismissed case that the United States Court of Appeals has so far sanctioned

this departure from due process in judicial and applicable decisions of the Supreme Court to call for the exercise of this Courts power of supervision.

> The Supreme Court has ... recognized due process requirements are implicated whenever enforcement power of the government is employed to deprvie an individual of an interest deprived from common law in peaceful possession Lindsey v. Norbert, 405 U S 56(1972) of real or personal property...whether property is being taken to meet a need ... or benefit of... an individual. Edwing v. Mytinger, Inc. 339 US (1950).

The Court of Appeals dismisses appeal for lack of jurisdiction, but reviews to award local counsel attorney fees and costs and this award is mentioned ten (10) tines. Petitioner contends that the un-appealable judgments which ~~were~~ as intentionally set in case by ~~William Boston~~ Charlotte Holt, Boston, Holt, Foster and the Judge instruced the pro se to appeal, ~~are~~ is fraud upon her the Courts and the people of the United States, and cause for removal under... intentional interference with inheritance, De Witt v. Dice(1979) CAS Fla 599 676.

> And, federal court has power to hear claims that would not be independenty removable... Watkins v. Grover, (1974) CA 9 Cal) 508 F2d 920.

> And, after removal... on appeal it is not whether case was porperly removed, but whether federal court had orginal jurisdiction had it been filed in that Court. Grubbs v. General Electric, (1978) 405 US 699.

The United States Court of Appeals has jurisdiction over this case after removal and acted on by the District Court, Article III, in all cases of law and equity and diversity of citizenship. And pro se could file case in District Court, but lawyer did not inform her of this right.

The Court of Appeals makes error in stating the cause of dismissal as untimely, pro se did not have any knowledge of time to remove case and any reference was submitted by clerk who wrote decision. Case No. 84-6090, was dismissed for failure to state a claim on which relief could be granted.

The above case was petitioned for removal on the grounds that Petitioner was being denied civil and constitutional rights by State Court and it is believed that it meets the two pronged test. The local prejudice and political influence is reflected in the unappealable judgment entered with the complete knowledge and signature of the Trial Judge. The lawyer for the defense submitted order dismissing himself, and he, and William Boston, and the Judge signed this order on January 10, 1984. The Court of Appeals in Tennessee ruled that order, instead of

Judgment on December 20, 1983, should have been appealed by pro se Defendant. Petitioner believes that the intentionally prepared unappealable judgment by counsel William Boston resulted in the unappealable judgment on April 26, 1984 by the Court of Appeals, in Tennessee, in which Case No 84-6090, is not fully litigated until the sale of the porperty at Public auction. At this time the Court of Appeals states in order actions of Trial Court will be reviewed.

Petitioner contends that she is pro se and does not know or understand law, but unappealable judgment of December 20, 1983, in Case 84-6090, appears to be fraud pursuant to 60.02 TRCP(2)fraud (whether hereto denominated intrinsic or extrensic), misrepresentation or misconduct of adverse party;" She believes that this same law applies in Federal Courts. "...absent fraud or some other factor invalidating judgment... the Court then proceeds to discuss collateral estoppel...Com'r v. Summen,(1948) 333 US 591 597. Petitioner believes unappealable judgment renders Case No 84-6090, invalid and allows for valid Case No. 85-5032, filed in the United States District Pro se and under Diverstiy of citizenship, in which

Petitioner is pro se in a different charcter and capacity.

> It is held that a judgment against a party suing or sued in the representative capacity cannot be introduced either as a bar or estoppel when he appears in subsequent action by or against him in his individual capacity... in order for a person to be bound by the former adjudication of a case, he must not only appear in the same capacity and character, McGregor v. First Provident Trust Co. (1935) 119 Fla 718, 733.It is settled law that former judgment does not have the effect of res judicata and is not conclusive of a material fact therin adjudicated unless the second action is between them is in the same capacity and character. Keith v. Willers Truck Service,(1936) 64 S.D. 274 277 266."... if he brings one action in a different capacity from that in which he brings the other, then he is in truth not the same person. He cannot be bound... by previous judgment ... on the other McCarthy v. William H. Hood Lumber Co. (1914) 219 Mass. 566 569 107 NE 439. The Court of Appeals relies on Tennessee Case, and denied case law of other States, especially Florida, which has the same base of Old English law.Emphasis added.

The only queston decided in Case 84-6090. is hat the property be sold at Public Auction.Whereas es judicata forecloses all that which has been igated previously, collateral estoppel treats as inal only those questions actually and necessarily ecided in prior suit Brown v. Felson,(1979)442 US 27, 138. The one form of action and the right to ead both legal and equitable grounds and defenses, ether cumulative or inconsistent, does have an

Deltaland Services Inc., v. Gaudet, (1974) 414US 573. The doctrine of res judicata bars only the legal dispute of partition sale, which was decided in prior judgment based on fraud and the settlement by agreement was pled, but it was not ruled upon. That interest was pled in prior suit, Kootz v. Cumis Insurance Society Inc., 676 S.W 2d 350 352(Tenn. 1984). Petitioner has never been heard in Case No. 85-5032, or had a reasonable opportunity to plead the case for the right to her property both equitable and just, and the equity created by her investment in restoration of her retirement home, and she suffers irreparable damage and the loss of a right to never be regained to her property. And Petitioner has been denied just compensation in Cases No. 84-6090, and 85-5032.

CASE NOS. 85-5101 & 5147

These cases arise out of Case No 85-5032, in which the Court of Appeals affirms the order of the District awarding attorney costs and fees, and adds fees and costs in Case No 84-6090, not awarded by the District Court and calls for this Court's power of supervision. After Petitioner appealed Case No. 85-5032, and awarding costs and attoreny fees to

local counsel was entered. When Petitioner submitted objection to counsel's costs and fees, this objection was held by Ms. Sheri Tipton, Deputy Clerk Jan. 9,1985. Petitioner was obligated to submit appeal before this motion was entered on February 4, 1985. Petitioner called the Court and was told Ms. Tipton snowed in, brother-in-law ill,and when order entered after Notice of Appeal, then Petitioner had to appeal again at a cost of $280.00 to get appeal into the Court of Appeals. She also kept sending money for appeal in circles and Petitioner believes this action intent to abort appeal.Case No. 85-5101.

The Court of Appeals is in error about the marginal entry(Page 2, Order) from which the Judge actually wrote"no jurisdiction already appealed" on motion to dismiss No.5147 . It appears that Case 5101, was not reviewable by notice of appeal being submitted while motion intentionally held, and Case No. 5147 was unreviewable by Judge Wiseman's note, and Pro se appealed third time to get appeal into Court of Appeals as it appeared clerk was trying to abort appeal.

The Court of Appeals reviews and in addition to costs and attorney fees awarded local counsel in

se No 84-5032, by the District Court, awards costs
fees for"anticipary legal work" and states" no
son why work ahould go by wayside." Petitioner
bmitted memorandum to motion to dismsiss award
wing costs and attorney fees on 10/06/84, 10/08/84
/84, 10/19/84 and 10/26/94, denied in Case No
-0082, on October 26, 1984. And that items dated
6/84, 10/09/84, 10/19/84, 10/05/84, 12/05/84,
12/07/84, are all long distance telephone calls
local counsel, Edward Boston's father, William Boston in Lawrenc
, Tennessee.In this order the Court of Appeals
stizes pro se for writing letters in her defense
dward Boston 's hand delivered letters to the
orable Thomas Wiseman. Pro se was not served bill of cos to obj

Petitioner suffered a heart attack, open heart
surgery and resulting complications,which leaves
her unable to work for many years and medical bills.
her property has been ordered sold which she has bee
eparing for retirement home for ten years without
process and jury trial, Petitioner believes
she is being penalized for trying to defend he
to irreparable damages and the loss of a righ
regained to her retirement home.

REASONS FOR GRANTING WRIT

I.

A. The Court of Appeals has improperly dismissed cases and departed from the accepted course of judical proceedings without considering whether sale of property unconstitutionally deprived Petitioner of property interest without due process of law.

The Court of appeals dismissed cases without sidering whether the sale of petitioner's property onstitutionally deprives of her of her property erest without due process and just compensation. se cases were dismissed without oral argument and ing Petitioner an opportunity to be heard.

... due process placed upon the government the duty to give notice and opportunity to be heard, Binkeroff Faris & Savings Co. v. Hill, 281 US 673 678 (1930) to individuals whose life, liberty or property were adversly affected by government action. The assurance of a fair hearing before a"neutral magristrate" who has no direct, personal substantial interest in reaching a conclusion against him in his case. Tuny v. Ohio,273 US 510 523(1927).

The Court of Appeals dismissed one case 85-6090, reviewed to identify request for just compensation restoration of property as injunctive relief and ed, but awarded local attorney fees and costs. The Court of Appeals did not examine the un- able judgment, which was entered on December 20, awrence County Court, and the Trial Judge instructed

pro se to appeal within 90 days. It appears that this unappeable judgment prepared by William Boston is fraud upon Petitioner and the Judicial process 60.02 TRAP, and that her property was adversly affected. And that she is pro se makes greater damage.

The Court of Appeals fails to consider that both legal and equitable rights were pled at the initial hearing. The only legal argument presented is that Frank Holen wants the property sold so his kids can buy it, and he did not offer Petitioner any compensation for investment which is equitable rights and the basis of her complaint Case No. 85-5032. Tennessee still retains old land owner rights and agreements are legal and binding as late as 1975.

> 29-27-117. If the commissioners are satisfied that the exact partition cannot be made ... they may make the partitions as equal as they can and charge the larger shares with sums necessary to equalize all shares, and report the facts. TCA
>
> The Court may... in accordance with one or more of the cotenants, order an allotment of a share or shares in kind and severally, and direct a sale of the other portion if it is not susceptable to partition in kind...Vandenburg v. Holder, 4 Tenn. Civ. App.(Higgins 111(1913).

Petitioner contends that the unappeable judgment frauds Case No. 84-6090, and it is invalid, and that Case No. 85-5032, is the valid case.

B. The Court of Appeals has improperly dismissed cases and has so far sanctioned the departure of accepted and usual course of judicial proceedings of the District Court as to call for an exercise of this Court's power of Supervision.

The Court of Appeals has improperly dismissed these cases and sanctioned the departure of accepted judicial proceedings by the District Court. These cases were dismissed without oral argument or any kind of hearing within two or three weeks of filing.

Petitioner called The Honorable Thomas Wiseman while in Tennessee in August 1983, expressing concern about the handling of her property case,and he stated that she could petition the District Court. Judge Wiseman states that Petitioner has sued the members of his Court.

Petitioner has been sued in cases related these cases, and has sued in her defense. On October 10, 1984, Petitioner went to the Circuit Court of Lawrence County after riding bus all night to appeal suit filed against her by Buford Evans. Mr. Gerald Wilson, Clerk would not allow her to appeal until she went to County clerk and brought copy of an additional 40 acres of her property. And they are still holding this deed Case,No. 10647.

On December 26, 1984, Petitioner checked suits ...ed in her defense, Case No. 10611, Earlene Polyak ...illiam Boston, Boston Bates & Holt, and Case No. ...12, Earlene Polyak v. Thomas Stack, and found ...t appeared to be orders dismissing her objections ... the sale of her property in Chancery Court Case ... 1974, in the nonsuit cases in Circuit Court.

Petitioner was forced to travel from Florida ...th acute health problems against the instructions ... her physicians to trial on December 26, 1984. ... believed the Honorable Jim Hamilton influenced ... jury against her and wanted to appeal to get ... decision set aside. Judge Hamilton ignored all ... her motions, petitions, requests, and the motion ... he disqualify himself on this date. Petitioner ...mitted application for permission to appeal to ... Court of Appeals and after denial, to the Supreme ...urt of Tennessee, which was denied, and has denied ... of her applications. It appears that Judge ...milton finally entered judgment as a result of thi ...tion.

Petitioner filed Notice of Appeal and copy was ...turned from Court of Appeals due to Rule 5(a)

being amended, it was not required notice be filed. Judge Hamilton denied Petitioner's motion to forward the record to the Court of Appeals on December 7, 1985, and denied appeal as a right. Petitioner believes that as the unappeable judgment is used to discriminate, the amended Rule 5(a) is also used as a law to discriminate as to who is allowed appeal in Tennessee.The clerk or Trial Judge controls who appeals by forwarding the record for appeal.

Petitioner filed a complaint No.1:85-0116, in the District Court at Nashville, on December 8, 1985, and tried to join as she understands 1441(c) when ever a separate independent clain... is sued upon alone one or more nonremovable claims... entire case may be removed, and tried to join Evans No. 1:85-0120, Stack No. 1:85-0125, Boston No. 3-85X-108

Judge Wiseman dismissed Hamilton case within five days without oral argument or hearing, and enjoined Petitioner from filing further cases in District Court. He dismissed Evans within a few days without hearing, and denied Boston's case filing. Judge Wiseman decided Stack case showed evidence of negilence and malfeasance and after dismissing all five cases, he allowed this case filed.

On May 2, 1986, Judge Wiseman ordered all of the above cases closed, which obligated Petitioner to appeal his order to keep property from being sold. Petitioner understands that this may prevent review on certiorari, if this Court does not consider this matter, which renders the pro se ligitant helpless,and the importance of the individual's access to the Courts.

Petitioner grounded the removal of all of the cases in the denial of the State Court of due proces and civil and constitutional rights as secured in the Fifth and Fourteenth Amendments.

Prior to this action, Petitioner submitted a motion to stay mandate in this case for writ, which was held without granting and finally denied. Petiti decided to enter Notice of Appeal on March 17, 1986, and notice was returned within four(4) days by Mrs. Yvonne Henderson Case Supervisor. Petitioner called the Court of Appeals and asked for Clerks,but they would never take her calls. Finally she asked to speak to a Judge, and Mr. Lenord Green, Ass. Cler stated that she could return notice, but it is filed April 10, 1986, which makes it untimely. Thus Petiti is blocked from appeal and writ and at mercy of Cour

The Court of Appeals allowed Robert Boston to submit attorney fees and costs in this case without serving Petitioner, and disregards motion to reconsider recalling mandate for objection to costs and fees. On February 1, 1986, Petitioner mailed notice of appeal in case No. 1:85-0125, and the District Court at Nashville, denies receiving until February 7, while Court of Appeals received notice on February 3, 1986. The Court of Appeals is dismissing appeal. Petitioner learned that District Court picks up mail and determines when certified card is returned to post office. Petitioner has submitted a writ of mandamus to correct this case for appeal and review to this Court.

III

C. The above mentioned cases may be of imperative public importance to justify the deviation from normal appellate practice to review cases in Court of Appeals and require immediate settlement in this Court.

These cases may be of impe rative public importance as the Court of Appeals and the District Court has so far departed from accepted judicial proceeding in the consideration of the taking of property by order to sell, which unconstitutionally deprives the pro se ligitant of property interest

without due process and just compensation.Petitioner did appeal Judge Wiseman's order, but Case Supervisor has styled appeal to all cases, thus they will be moved to Court of Appeals. Petitioner has submitted motions to stay records in District Court, but all motions in the District and Court of Appeals are ignored. Petitioner believes these records may be hidden in Court of Appeals in favor of local prejudic and influence aagainst nonresident pro se ligitant.

Petitioner's two properties are located about 32 miles south of the new General Motors, "Saturn Plant", and local newspapers describe this as the prime area for development and investment in property. It is her understanding that all inherited property is ordered sold at Public Auction, and she has heard this called land grabbing. Petitioner believes that the sale of her property is an irreparable damage to her health, and the loss of a right of interest to never be regained to her retirement home.

CONCLUSION

Petitioner prays that a writ of certorari issue to review the above styled cases, and Case No. 84-6090 be declared invalid, and that Case No. 85-5032

scheduled for jury trial. And in the alternative, itioner prays that she be awarded just compensation set forth in petition for $60,000.00, and as set h in the complaint for $60,000.00.

Respectfully submitted,

Earlene Polyak
3179 Middlefield Drive
Trenton, Michigan 48183
(313) 676-3364

CERTIFICATE OF SERVICE

I certify that a true and exact copy of this of certiorari has been mailed, First Class, age prepaid, to the United States Court of Appeals, ost Office and Courthouse, Cincinnati, Ohio 2, United States District Court, 600 Courthouse, ville, Tennessee 35203, and Mr. Edward Boston rney At Law, 2100 One Commerce Place, Nashville, essee 37219, and all parties of interest in this ing.

On the [illegible] day of May, 1986.

Earlene Polyak

TE OF MICHIGAN
NTY OF WAYNE

I certify that the above information is true correct to the best of my knowledge.

commission expires [illegible]

Notary Public

[illegible]
Notary Public [illegible], Michigan
My Commission Expires [illegible]

APPENDIX A

In the United States Court of Appeals for the Sixth Circuit.

Earlene Polyak, Plaintiff-Appellant v. Frank Hulen and Wilma Lesnansky, Defendant-Appellee,Case No. 85-5032/5101/5147. D.C. No. 1:84-0083.

Consolidated on appeal on request of counsel for the Respondent over objection of Petitioner on March 1, 1985, with:

Frank Hulen and Wilma Lesnansky, Plaintiff-Appellee, v. Earlene Polyak, Defendant-Appellant, Case No. 84-6090, D.C. 1:84-0082. Chancery Court of Lawrence County Case No. 1974, Court of Appeals and Supreme Court of Tennessee, Case No.83-405-II.

Filed: December 17, 1985, Ext.to 6/13/86.

Rehear denied on February 13, 1986.

Appeal from the United States District Court for the Middle District of Tennessee, Thomas A. Wiseman Jr., Chief Judge Presiding.

Before: KENNEDY AND KRUPANSKY, Circuit Judges; and SUHRHEINRICH, District Judge, for the Eastern District of Michigan.

SUMMARY OF DECISIONS

The Court of Appeals affirmed the decisions of the United States District Court dismissing Case No. 85-5032/5101/5147, and Case No. 84-6090, without oral argument or any kind of hearing when trial by jury was requested. This Court did not consider settlement by agreement, or whether the order to sell retirement home without just compensation for ten (10) year investment in restoration and maintenance unconstitutionally deprives Petitioner of property interest due process and calls for the Supreme Court's power of supervision.

Case No. 85-5032, and Case No. 84-6090, were consolidated over Petitioner's objections, and the supervisior denied Exhibits in these cases. It appears that these decisions are not recommended for full text publication.

Case No. 85-5032, was dismissed without hearing or jury trial as set out in the complaint, under diversity of citizenship, and filed the District Court in good faith to avoid local prejudice and local influence. Petitioner's request for just compensation is identified as injunctive relief and denied. And local counsel Edward Boston,

is awarded costs and attorney fees. Petitioner's request for restraining order pending process of the Courts is treated as cause of action, and right to retirement home, investment and equity as a result of investment, is totally ignored. Petitioner filed Case No. 85-5032, District No. 84-0083, on October 18, 1984. Court affirms dismissal res judicata.

Case No. 85-5101, is the result of Petitioner's objection to Edward Boston's award of attorney costs and fees.This case was held until Petitioner was obligated to submitt notice of appeal. Motion was finally put on docket on February 4, 1984, and Petitioner was obligated to file notice of appeal Case No. 85-5147, to try to appeal into Court of Appeals. Court added cost denied in Case No. 84-6090.

Case No. 84-6090, was removed on the grounds that Petitioner was denied in State court her rights as secured by the laws securing civil and constitutional rights by the Fifth and Fourteenth Amendment. The Court of appeals jurisdiction to review case, but reviews to award costs and attorney fees denied by the District Court, and this award is mentioned at least times.Court denies grounds in 28 U.SC 1443(1).

APPENDIX B

In the United States District Court, Middle District of Tennessee.

Earlene Polyak, Plaintiff, v Frank Hulen and Wilma Lesnansky, Defendants, Case No. 1: 8 -0083.

Filed:November 18, 1984.

Dismissed: December 3, 1984.

Petition to Rehear and Deny Attorney Fees, Denied December 12, 1984, Case No. 2.

Motion to strike Defendant's motion to Dismiss Award of Attorney fees and costs and Sanction marked"This matter has been appealed. This Court does not have Jurisdiction"

February 4, 1985.

Thomas A. Wiseman Jr. Chief Judge.

Appealed to the United States Court of Appeals For the Sixth Circuit.

SUMMARY OF DECISION

The District Court dismissed complaint asking that Plaintiff be awarded her rightful partition of property as agreed in 1976, with Frank Hulen adding acreage to his farm, and Wilma Lesnansky get acreage

o east of house, and Plaintiff getting house and mall acreage to compensate for their additional creage,on motion of local counsel Edward Boston. ounsel was awarded costs and attorney fees.

Plaintiff asked for a restraining order against ale of alloted crops antique furniture, and Burley obacco allotment, which had been taken in 1983. he also stated that she had heart problems and sked for the protection of the Court from cruel nd unusual punishment as she was forced to go to earing on July 29, 1983, in 102 degrees against ationwide warming for heart patients to stay inside. he Court used request for restraining order as ause of action in decision.

The Court ordered attorney costs and fees paid n January 9, 1985, and Petitioner submitted motion o dismiss award and objection to award of attorney ees and costs and sanction on January 17,but this otion was not filed, but held until February 4, 985. Petitioner was obligated to submitt appeal ithin 30 days and while motion pending in Case No. 5-5101, then appeal order entered February 4, Case o. 85-5147.This order stated" This matter has been ppealed. This Court does not have jurisdiction."

APPENDIX C

In the United States District Court, Middle District of Tennessee.

Frank Hulen and Wilma Lesnansky, Plaintiff v Earlene Polyak, Defendant, Case No.1:84-0082

Filed: October 1, 1984.

Dismissed: October 26, 1984.

Presiding: Thomas Wiseman Jr, Chief Judge.

Appealed to the United States Court of Appeals for the Sixth Circuit on November 6, 1986.

SUMMARY OF DECISION

The District court dismissed the claim of Petitioner for failure to state a claim on which relief can be granted. Respondent's request for costs and attorney fees denied. Oral argument denied.

This case was removed from the Chancery Court in Lawrence County, Tennessee. It was Petitioner's understanding that Court could be petitioned to hear appeal, after a telephone conservation with the Honorable Thomas Wiseman in August, 1983, or new trial.

Petitioner grounded her petition for removal on the basis that she was being denied by State Court laws providing or equal civil and constitutional rights as provided by the Fifth and Fourteenth Amend.

Petitioner supports the fact that she submitted Constitutional questions in her petition. She asked for a new trial, or alteration, or amendmendment of judgment to allow her just compensation for the restoration and maintenance of her retirement home, and describes the unfair and unjust hearing that was conducted while the jury was out on another trial, and her acute illnes due to 102 degree heat wave, and nationwide warning to heart patients 7/29/83.

Petitioner referrs to the local prejudice and political influence, which she believes is in violation of her civil rights. William Boston identified her as a non-resident, and in one brief he described the Farm Building Company as miniotes to . The identification as a non-resident violates the constitutional right of privileges and immunites in the Fourteenth Amendment. Petitioner was not allowed to probate without being joined with a resident by Tennessee law. It is stated

> A complete list of the priveleges and immunities ... but basically it means that a State may not discriminate against a citizen from another State simply because he is nonresident. Magruder's American Government, (1959 Amendment 14 739).

APPENDIX D

In the Court of Appeals and Supreme Court of Tennessee, Middle Section at Nashville.

Frank Hulen and Wilma Lesnansky, Plaintiff-Appellee v. Earlene Polyak Defendant-Appellant.

Civil Action No. 83-405-II.

Filed:February 22, 1984.

Dismissed: April 26, 1984.

Presiding at the Court of Appeals: Judge Henry F. Todd P.J., Judge Samuel Lewis, Judge Ben H. Cantrell, and Judge Lewis H. Connor, Jr.

This Appeal is from the Chancery Court, Lawrence County, Tennessee, from the Order to sell Petitioner's property without just compensation entered on October 19, 1983, and denial of motion for a New Trial, or for Alteration and Amendment of Judgment to allow for compensation for restoration of retirement home entered on December 20, 1983.

Presiding: The Honorable Jim T. Hamilton at both hearings.

SUMMARY OF DECISIONS

Petitioner grounded this appeal in her belief that the order to sell her retirement home verbally issued on July 29, 1983, followed by entering

order to sell on October 19, 1983, unconstitutionally deprived her property without just compensation for the restoration and maintenance at Public Auction for the benifit of others and in violation of the Fifth and Fourteenth Amendment. Petitioner asked the attorney for the defense for a New Trial within three days of the decision on July 29, 1983. And Petitioner argued again before the Honorable Jim Hamilton that her constitutional rights were being violated, asked for a New Trial, and argued for just compensation for restoration of retirement home.

The Trial Clerk filed the technical record in the Court of Appeals on January 26, 1984, just 23 days after notice of appeal submitted on January 3, and without including notice of appeal. It appears that she scheduled oral argument as card stated "Oral Argument" scheduled for April 30-May 4, 1984. Case was suddenly dismissed on technicalities as Notice of Appeal was not submitted in technical record. Petitioner was allowed a brief on technicality of dismissal, but it was decided that she should have appealed order instead of judgment. Judgment

prepared by attorney for plaintiff, William Boston is as follows:

JUDGMENT

This cause came on to be heard on the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge, upon Motion this day filed by defendant, personally in her own behalf, Statement and argument of the Defendant, Earlene Polyak, in her own behalf, from all of which the Court finds there to be not merit, and said Motion is here and now overruled in its entirety. Judgment is signed by William Boston and Judge Hamilton on December 20, 1983.

An order submitted by attorney for the defense, Thomas Stack, after he was dismissed and without petitioner's knowledge, is as follows:

ORDER

This cause came to be heard on this the 19th day of December, 1983, before the Honorable Jim T. Hamilton, Judge Part II of the Circuit and Chancery Courts of Lawrence County, Tennessee, on the Motion for a New Trial or for Alteration or Amendment of the Order previously filed herein by Defendant, Earlene Polyak by and through her counsel of record, Henry, Henry & Stack: and upon the oral motion of said Earlene Polyakto be allowed to represent pro se and that Henry, Henry & Stack be relieved as counsel and further that aforementioned Motion not be heard by this Court: IT IS THEREFORE ORDERED that Henry, Henry & Stack are relieved as counsel in this cause and that aforementioned Motion for a New Trial, etc, be and is hereby dismissed. This order is signed by Thomas Stack, William Boston and Judge Hamilton on January 10, 1984.

The above judgment and order were entered after pro se Petitioner had assumed her own case, with the permission of all parties and the Judge, and argued from notes on a yellow paper, for a New Trial and Alteration or Amendment of previous order of July 29, 1983. Petitioner has suspected for sometime that Mr. Stack was not representing her best interest, and after he returned her materials she found that he did not enter Memorandum Brief, evaluation of property, bills for restoration of house, or prepare a transcript of the proceedings.

Petitioner filed a Petition to Rehear on March 12, 1984, stating that Technical Record had been prematurely filed(by Mrs. Frances Freemon, Clerk and Master), and that brief and Statement of Evidence were not due until March 14, 1984. On April 2, 1984, Judge Hamilton rejected Petitioner's Statement of Evidence containg verbatun description of two hearings, evaluation of property, and assessed improvement value of house as a result of her restoration of $810.00 on 1983, tax statement, and evidence remains supressed from the record. Judge Hamilton certified William Boston's Bill of Exceptions.

Petitioner submitted timely main brief on February 22, 1984, but the brief was never considered as the Court of Appeals dismissed this case on April 26, 1984.The pertinent part of decision folows:

> And it appearing from the record that appellant's motion to alter or amend was heard on December 19, 1983, that on January 3, 1984, appellant filed a notice of appeal"from the final judgment entered on December 20, 1983, but the order overruling appellant's motion to alter or amend was not entered until January 10, 1984.
> ... and it appearing that the judgment from which appeal was sought is not a final judgment appealable as of a rightunder TRAP Rule 3 in that said judgment orders the sale of property but does not confirm any sale or transfer title
>
> IT IS THEREFORE ORDERED that this appeal be and hereby dismissed at the cost to the appellant without prejudice to review of any and all actions of the Trial Court by appeal prosecuted from final judgment.

Prior to the above decision, Petitioner argued on the technicalities, and that the cost of the sale of this property added to the denial of civil and constitutional right by taking property without just compensation,and without due process for sale at Public Auction and in violation of the Fifth Amendment.

Petitioner argued that order of January 10, submitted without her knowledge,and since

she was without counsel, in violation of Rule 58, T.R.A.P.,"adds the requirement that a judgment or other action of the Court cannot be filed until it bears not only the signature of the judge, but also (1) the signatures of all parties or their counsel" And if this order should have been appealed, her notice was submitted only six days prior to order, and T.R.A.P.,Rule 4(d)a notice of appeal filed before the entry of the judgment shall be treated as filed sfter such entry and on the day thereof, and (d) establishes general rule that a right of appeal is not lost by filing the notice of appeal before judgment appealed.

Judge Hamilton ignored all of Petitioner's motions to correct the record and counsel for Plaintiff argued that order disposing of motion for new trial not entered, but Judge Cantrell ruled on January 19, 1983," the Court reasoned that while 58.02 T.R.A.P., indicates that a motion cannot be disposed other than by filing order..."the Trial Judge had verbally overruled Petitioner's motion and wrote word overruled on dockett... Gilliam v. Butler,663 S.W. 2d 801(Tenn. App. 1983). Judgment overruled motion.

SUPREME COURT

In the Supreme Court of Tennessee, Middle Division, this case same No. 83-405-II.

Presiding: William Foner, Chief Judge, Ray Brock, Robert Cooper, Frank Drovota, and William B. Harrison, Associate Judges.

Application for Permission to Appeal submitted on May 17, 1984, and denied on July 2, 1984.

Petition to Rehear Denial of Application for Permission to Appeal to the Supreme Court submitted on July 12, 1984.

A Motion to Permit Second Petition to Rehear was filed on September 4, 1984, and denied on October 1, 1984.

SUMMARY

In the application for permission to appeal, Petitioner stated that she was being denied civil and constitutional right to appeal and due process to defend her right to her property and requested the suprevisory power of the Supreme Court. She tried to that the judgment on which the Court of appeals ruled was not a final judgment appealable as a righ pursuant to Rule 3 TRAP, and stated that Rule 60.02 T.R.A.P, gives the Court power to correct

the misconduct of adverse party. Petitioner submitted a motion to releave and revise judgment on July 10, 1984. She suggested the many mistakes by the Trial Judge, such as crossing county lines from the county from complaint registered, to hasty hearing while jury was out on another trial, and that Trial Judge's order to sell property "are not conclusive upon Appellate Courts. Citizen's National Life Insurance Company v. Witherspoon, 127 Tenn. 363 155 S.W. 139(1912).

Petitioner stated that she had prepared house at her own expense for retirement and that it is not manifestly in her best interest that this property be sold." a sale for partition, where there is no evidence to show its nesessity, will be set aside." Bradbury v. Martin 3 Shannon's Cases 469(1975). Tenn. And that "Parole Partition of land followed by persons in possession is binding and enforceable." Martin v. Taylor, 521 S.W. 2d 582(Tenn. 1975). Petitioner has restored and maintained property since 1976, which is ten(10) years, and her rights are supported by statute and an abundance of case law in Tennessee.

And the loss of her retirement home is an irreparable damage to her health and right to property.

APPENDIX E

In the Chancery Court of Lawrence County, Lawrenceburg, Tennessee.

Frank Hulen and Wilma Lesnansky, Plaintiff v. Earlene Polyak, Defendant. Frank Hulen is 74 years, Earlene Polyak 64, and Wilma Lesnansky 62, years of age. Petitioner was identified as non-resident in suit.

Complaint and restraining order against finishing restoration of 45 year old house to move to Tennessee was served on Petitioner on April 19, 1983.

Hearing held in Columbia, Maury County when complaint entered in Lawrence County and against Tennessee law, while the jury was out on another trial, on July 29, 1983.

Presiding: The Honorable Jim Hamilton.

Judge Hamilton verbally issued order to sell property within two hours when attorney for the defense, Thomas Stack, Henry, Henry & Stack started to give summary.

The order to sell property was formally issued, naming Eulan Hooper, Real Estate Auctioner, to sell it. Mr. Hooper testified that property could not be divided for Plaintiffs.They were represented by William Boston, Boston, Bates and Holt, who represente

the family since 1976, and divided loyalties to file complaint against Petitioner.

Notice of appeal filed in Chancery Court of Lawrence County,on January 3, 1983.

Main Brief filed on February 23, 1983.

Statement of Evidence mailed to Chancery Court on March 2, 1984. Notice of appeal ans statement timely.

SUMMARY

Within one week after Mrs. Rena Ann Hulen's death, Respondents initiated settlement by agreement of property with Frank Hulen adding the back strip of forty (40) acres to his property, Wilma Lesnansky could get the acreage to the east of the house, as her son wanted to build house, and Petitioner was to get forty (46) year old house with roof falling in, and acreage in front, approximately six to ten total acres. As a result of agreement Petitioner and husband, Alex Polyak traveled to the farm at least twice each year to hire new roof put on house, which cost over $1200.00. In 1982, Frank Hulen stated that he wanted the house sold so his kids could buy it,and he,and Wilma Lesnansky sued for sale, and William Boston divided his loyalties and represented them in suit.

Petitioner became suspicious that Mr. Stack was not representing her best interest when he neglected to answer letters, and answer telephone calls and went to Tennessee, on August 22, 1983, to check property and confront Mr. Stack. He did write letters to William Boston, who was holding order to sell for 54 days, against Tennessee law to enter within seven days.

On December 19, 1983, Petitioner took more bills for the restoration of the house and went to Court to be present while Mr. Stack argued for New Trial and Alteration or Amendment of previous order, in which she was not given any compensation for restorati and Judge Hamilton ordered her to pay Court Costs, but awarded attorney fees for sale. Judge Hamilton named Eulan Hooper to sell property. Mr. Hooper has since lost his license for six months and is on two year probation with the Real Estate Commission.

Petitioner assumed her own case when Mr. Stack refused to present bills to the Court. He had already indicated that he did not believe Judge Hamilton would allow her any money for restoration. She had confronted Mr. Stack with an unfair and unjust trial in his office on August 1, 1983, within three days.

Petitioner confronted Judge Hamilton with an
ust and unfair trial and she believes that she
sed the constitutional question again on
ember 19, 1983, as her property was being taken
hout just compensation in the Court. She asked
a New Trial, based on (1) she was taken across
nty lines for hearing in Maury County, when
plaint was filed in Lawrence County and she believes
s is against Tennessee law,(2) Plaintiff Wilma
nansky did not come to the hearing, or testify
n she signed complaint and initiated agreement
ivide property in the best interest of all(3)
able evidence was with held with Mrs Lesnansky's
timony and Alex Polyak did not get to give testimony.
as aware of agreement and present when division
s were being drawn for the third time by Frank
n. Alex Polyak did all of the work clearing heavy
rbrush, which is difficult for him as he wears
rtificial limb as a result of World War II,(3)
tioner was obligated to attend hearing on July 29,
, in 102 degree temperature against nationwide
ing ro heart patients to stay inside. She became
as a result of exposure to heat in front of Mr.
k's office and asked two times for the hearing

to be rescheduled to allow her to get better,(5) Petitioner's case was not given adequate time and consideratikn by the Court due to the fact it was held while the jury was out on another trial.

Petitioner predicated her argument for amendment or alteration of previous order on the Court's failure to award her any monies spent for the restoration of the property out of the proceeds before the distribution of any of the money from the sale.Judge Hamilton verbally denied motion and told Mr. Boston to prepare judgment and instructed Petitioner to get her appeal in within ninety(90) days.

After Mr. Stack returned Petitioner's materials from her case, she learned that he did not enter record any of the bills for the restoration of the house, as he returned all of them. He did not enter the evaluation and division of the property into three equal parts of value prepared by Mr. Buford Evans, but testified against her for service that he ordered without her permission or knowledge. Mr. Stack did not enter memorandum brief which he was allowed to submit after judge ordered property sold, or provide a transcript of the proceedings. Petitioner believes Mr. Evans map invalid representation of property. Mr

failed to keep agreement in letter with $1500.00 check, in which Petitioner wrote that it is my understanding if we are not successful in Lawrenceburg we will appeal to a higher Court. He had previously stated that his work would merit appeal.

The memorandum brief does verify that partition in kind if favored and governed by statute in Tennessee Code Annotated 29-27-101, et seq., and at 29-27-201 et. seq., and supported by years of case law, including one case she found dated 1975. She does not believe the legislature has changed any of these laws, but it appears the Court is ruling that all inherited property, especially non-resident, be sold at Public Auction.

Petitioner contends that she has spent ten(10) years restoring and maintaining her house in a more moderate climate, and that the loss of this property is an irreoarable damage to her health, and the loss of a right to never be regained to her retirement home.